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EXAMINER

STRIMBU, GREGORY J

| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,186

Applicant(s)

JOHNSTON, THOMAS B.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawing correction filed on January 12, 2005 has been approved, however, the drawings are still objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a Z bar must be shown or the feature(s) canceled from the claim(s). It should be noted that the element 2 as shown in the amended drawings does not appear to show a Z bar. It is still unclear what physical characteristics make the element 2 in the amended drawings a "Z" bar. Is the applicant referring to a Z shaped cross section? No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because the description of new figures 4 and 5 is missing.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “resistant to hurricane force winds” on lines 7-8 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What comprises resistance? Is the applicant referring to a material that prevents all wind from penetrating the material, is the applicant referring to a material that prevents 50 percent of the wind from penetrating the material or is the applicant referring to a material that prevents only 1 percent of the wind from penetrating the material? Additionally, it is unclear what comprises a hurricane force wind. Is the applicant referring to the wind speed or the force produced by the wind speed? Does a hurricane force wind include a wind speed of 500 miles per hour? Recitations such as “said building” on line 5 of claim 21 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a shutter or the combination of a shutter

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and a building. The preamble of claim 21 implies the subcombination while the positive recitation of the building implies the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Zveibil. Zveibil discloses a shutter providing protection from hurricane force winds comprising an outer frame 10 formed by a pair of vertical members and a pair of horizontal members connected to each other and defining an interior area, a plurality of functional horizontal louvers 18 movably connected to said outer frame and substantially filling said interior area of said frame; and wherein said outer frame and said louvers are made out of a material resistant to hurricane force winds, i.e., metal, an operating mechanism 32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 15, 23, 29, 38, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above and further in view of Lane. Lane discloses an L angle bracket operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Claims 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Vaida. Vaida discloses a winding crank operating mechanism 46.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a winding crank operating mechanism, as taught by Vaida, to increase the ease with which the louvers can be moved.

Claims 10, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Yadidya. Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with louvers, as taught by Yadidya, to prevent air from passing through the shutter.

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Claims 11 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Arehart et al. Arehart et al. discloses an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an aluminum construction, as taught by Arehart et al., to improve the corrosion resistance of the shutter.

Claims 12 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Astrisky. Astrisky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a polycarbonate construction, as taught by Astrisky, to increase the durability of the shutter.

Claims 13 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

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It would have been obvious to one of ordinary skill in the art to provide Zveibil, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Lane. Lane discloses a Z shaped operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Arehart et al. Arehart et al. discloses a means for holding a frame against a structure comprising holes and bolts 42.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a holding means, as taught by Arehart et al., to enable a user to fix the shutter to the structure for security purposes.

Claims 20 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35

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and 36 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Yadidya. Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with louvers, as taught by Yadidya, to prevent air from passing through the shutter.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Arehart et al. Arehart et al. discloses an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with an aluminum construction, as taught by Arehart et al., to improve the corrosion resistance of the shutter.

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Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Astrisky. Astrisky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a polycarbonate construction, as taught by Astrisky, to increase the durability of the shutter

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

Response to Arguments

Applicant's arguments filed January 12, 2005 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Zveibil, the examiner respectfully disagrees. Zveibil discloses a metal frame 10 as shown in figure 4 and described on lines 1-2 of column 2. Furthermore, Zveibil discloses metal louvers because the cross sectional shading of the plates 18 which comprise a part of the louvers indicates that the plates are metal. Note that the shading for both the frame 10 and the plates 18 is the same in figure 4 and that the shading agrees with a metal construction as set forth in MPEP 608.04.

With respect to the applicant's comments concerning a material resistant to hurricane force winds, the examiner respectfully disagrees. It should first be noted that hurricane force winds is an ambiguous term since it is unclear if the applicant is referring to category 1 or a category 5 winds and the term sufficient is ambiguous since it is unclear what comprises sufficient resistance. Additionally, the claims only require that the material be resistant to the hurricane force winds. Since metal is clearly a material that withstand high force winds, the metal construction of Zveibil meets the applicant's claimed invention. Note that the applicant has not claimed that the shutter is resistant to hurricane force winds, rather the applicant has only claimed that the material of the shutter be resistant to hurricane force winds. Finally, all metals of sufficient size are resistant to hurricane force winds.

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With respect to the applicant's arguments concerning the motivation to combine the references of record, the examiner respectfully disagrees. The rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as to why the modification would have been obvious, the applicant's arguments are not persuasive.

With respect to the applicant's comments concerning the combination of Zveibil and Lane, and Zveibil and Vaida, the examiner respectfully disagrees. One with ordinary skill in the art is well aware of the myriad of different types and sizes of operating mechanisms for louvered shutters. Choosing one type of operating mechanism over another type is analogous of choosing a screw instead of a nail. Therefore, one with ordinary skill in the art when considering the teachings of Zveibil and Lane or Vaida would easily be motivated to substitute the rod operating mechanism of Zveibil with the operating mechanism of Lane or Vaida since the Lane operating mechanism has a greater resistance to bending along the web of the operating mechanism or the Vaida operating mechanism increases the ease with which the louvers can be operated.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the applicant's comments concerning the combination of Zveibil and Yadidya, the examiner respectfully disagrees. Combining the teachings of Zveibil and Yadidya would produce a shutter that would provide a better insulating value since air would less able to pass through the shutter and thus reduce drafts. One with ordinary skill in the art would be well aware of the advantages of preventing drafts.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
April 15, 2005